

1
1 IN THE UNITED STATES DISTRICT COURT
2 MIDDLE DISTRICT OF FLORIDA
2 JACKSONVILLE DIVISION

3
3 SEA STAR LINE, LLC, a : CIVIL ACTION
4 limited liability :
5 company, :
5 Plaintiff :
6 vs. :
6

7 EMERALD EQUIPMENT :
7 LEASING, INC., a :
8 corporation, : NO. 3:04:CV-
8 Defendant : 146-99HTS
9

10 -----
10 January 25, 2005
11 -----

12 Oral Deposition of THOMAS J.
12 HOLT, SR., held in the law offices of
13 Adelman, Lavine, Gold & Levin, P.C.,
13 Four Penn Center, Suite 800, 1600 JFK
14 Boulevard, Philadelphia, Pennsylvania
14 19102, beginning at approximately
15 9:34 a.m., before Ann V. Kaufmann, a
15 Registered Professional Reporter,
16 Certified Realtime Reporter, Approved
16 Reporter of the U.S. District Court, and
17 a Notary Public of the Commonwealth of
17 Pennsylvania.

18

19 -----

20

21

22 ESQUIRE DEPOSITION SERVICES
22 1880 John F. Kennedy Boulevard
23 15th Floor
23 Philadelphia, Pennsylvania 19103
24 (215) 988-9191

25 ESQUIRE DEPOSITION SERVICES

1 APPEARANCES:

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10
10 PRESENT:

11 Andy Rooks
12 John Evans

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25 ESQUIRE DEPOSITION SERVICES

1 EXAMINATION INDEX

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3 THOMAS J. HOLT, SR.

4
5 BY MR. ARMSTRONG 5

6 EXHIBIT INDEX

7 Holt, Sr.

8
9 1 Document 107
10 2 E-mail dated August 29, 132
2003

11 3 Letter dated September 2, 132
2003

12 4 Fax cover sheet, letter 135
13 dated September 16, 2003
copy of the Equipment
14 Rental Agreement

15 5 Letter dated October 31, 136
2003

16 6 Letter dated November 21, 137
17 2003

18

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ESQUIRE DEPOSITION SERVICES

1 DEPOSITION SUPPORT INDEX
4

2

3 DIRECTION TO WITNESS NOT TO

4 ANSWER

5 (NONE)

6

7 REQUEST FOR PRODUCTION OF

8 INFORMATION/DOCUMENTS

9 (NONE)

10

11 STIPULATIONS

12 Page 5 Line 1

13

14 QUESTIONS MARKED

15

(NONE)

16

17

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25 ESQUIRE DEPOSITION SERVICES

5 Thomas J. Holt, Sr.

1 MR. ARMSTRONG: Normal

2 procedure, objections as to form?

3 MR. MOLDOFF: Yes.

4 -----

5THOMAS J. HOLT, SR.,

6 10710 Ellicott Road, Philadelphia, PA

7 19154, having been duly sworn was

8 examined and testified as follows:

9 EXAMINATION

10 BY MR. ARMSTRONG:

11 Q. Mr. Holt, I'm Tim

12 Armstrong. I represent Sea Star Line in

13 the case involving Sea Star Line and

14 Emerald Equipment Leasing, Inc.

15 Please state your full

16 name.

17 A. Thomas J. Holt, Sr.

18 Q. Where do you reside?

19 A. 10710 Ellicott Road,

20 Philadelphia, Pennsylvania.

21 Q. What is your business

22 address?

23 A. Same.

24 Q. By whom are you employed?

ESQUIRE DEPOSITION SERVICES

6 Thomas J. Holt, Sr.

1 A. Self.

2 Q. Are you involved in any
3 particular businesses?

4 A. Involved in what fashion?

5 I'm an advisor, consultant. Maybe you
6 can say it that way. I consult to
7 people that seek advice.

8 Q. How long have you been a
9 consultant?

10 A. Probably about three years
11 since I got fired.

12 Q. By whom were you fired?

13 A. The trustee of my company.

14 Q. What company was that?

15 A. The Holt Group.

16 Q. What is The Holt Group?

17 A. What is The Holt Group?

18 Q. Yes.

19 A. It was a company that I had
20 that owned operating companies.

21 Q. Does The Holt Group still
22 exist?

23 A. No, sir.

24 Q. What happened to it?

ESQUIRE DEPOSITION SERVICES

7 Thomas J. Holt, Sr.

1 A. Liquidated by the trustee.

2 Q. Has the liquidation been
3 complete?

4 A. You'd have to ask them. To
5 my knowledge, it has been.

6 Q. Are you aware of any
7 discharge in bankruptcy or anything such
8 as that?

9 A. I'm not a lawyer, so I
10 couldn't answer that.

11 Q. You mentioned "operating
12 companies." Was one of the operating
13 companies Holt Cargo Systems, Inc.?

14 A. Yes, sir.

15 Q. What was Holt Cargo
16 Systems, Inc.?

17 A. It was a stevedoring
18 company in the port of Philadelphia.

19 Q. Did Holt Cargo Systems,
20 Inc., have anything to do with
21 equipment?

22 A. What kind of equipment?

23 Q. Equipment used for carriage
24 of cargo.

ESQUIRE DEPOSITION SERVICES

Thomas J. Holt, Sr.

1 A. No. It had equipment that
2 was used in the stevedoring business.

3 Q. Did it have anything to do
4 with containers or gen-sets, trailers,
5 things of that nature?

6 A. As an owner or lessee?

7 Q. As anything.

8 A. Holt Cargo Systems owned
9 some generators and containers, but only
10 in the course of their business, which
11 is providing stevedoring.

12 Q. Did Holt Cargo Systems,
13 Inc., lease any trailers or containers?

14 A. To them or from them?

15 Q. From anyone.

16 A. Not that I'm aware of.

17 Q. What was your position with
18 Holt Group, Inc.?

19 A. President.

20 Q. Did you have an ownership
21 interest in Holt Group, Inc.?

22 A. 100%.

23 Q. What was your position with
24 Holt Cargo Systems, Inc.?

ESQUIRE DEPOSITION SERVICES

1 A. Owner, president.

2 Q. Were you also fired as

3 president of Holt Cargo Systems, Inc.,

4 by the trustee?

5 A. I don't recall the wording

6 of the letter, but I do believe it was

7 as Holt Group.

8 Q. I was using your word

9 "fired."

10 A. Yes, I was fired.

11 Q. And when you refer to the

12 trustee, are you referring to a trustee

13 in a Chapter 7 bankruptcy case or

14 proceeding?

15 A. In those days, it was

16 Chapter 11.

17 Q. Who replaced you at Holt

18 Group, Inc.?

19 A. I presume the trustee.

20 Q. Who replaced you at Holt

21 Cargo Systems, Inc.?

22 A. It was one in the same. It

23 was either a subsidiary or affiliate.

24 Whatever the legal term was, I owned

ESQUIRE DEPOSITION SERVICES

10

Thomas J. Holt, Sr.

1 both companies through The Holt Group.

2 Q. Do you believe the trustee

3 replaced you?

4 A. I think so.

5 Q. Was Holt Hauling and

6 Warehousing System, Inc., one of those

7 companies?

8 A. Yes, sir.

9 Q. It was an operating company?

10 A. No, sir.

11 Q. What did Holt Hauling and

12 Warehousing Systems, Inc., do?

13 A. It was a land holder.

14 Q. What was your position with

15 that company?

16 A. Owner and president.

17 Q. Are you still owner and

18 president?

19 A. No, sir.

20 Q. When did you cease being

21 president?

22 A. Again, I'm not a lawyer,

23 but I believe that was also liquidated

24 in the transactions of the trustee.

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11
1 Q. That was at the same time?

Thomas J. Holt, Sr.

2 A. All the same time.

3 Q. Are you familiar with SJIT?

4 A. You mean -- SJIT? This

5 was -- in what regard was SJIT?

6 Q. Well, San Juan

7 International Terminal.

8 A. I believe that was part of

9 The Holt Group, if I can remember that.

10 Q. Did you have anything to do

11 with SJIT?

12 A. If it was part of The Holt

13 Group, I owned it and was president. I

14 believe I did. We're going back now in

15 a very confusing time in my life.

16 Q. I understand.

17 A. But go ahead, keep going.

18 Q. I don't want to confuse

19 you.

20 A. You didn't confuse me. The

21 time confused me, the events.

22 Q. If I confuse you, let me

23 know.

24 How did they confuse you?

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12

Thomas J. Holt, Sr.

1 A. I was never in a bankruptcy

2 before.

3 Q. What was NPR Holding Corp.?

4 A. That was part of The Holt

5 Group.

6 Q. What did NPR Holding Corp.

7 do?

8 A. That was the corporation

9 that owned Navieras, that would be it.

10 There were two or three companies known

11 as NPR. But the records all show that,

12 so I don't want to surmise.

13 Q. When you refer to Navieras,

14 are you referring to NPR, Inc.?

15 A. I would have said yes to

16 that.

17 Q. How about NPR Navieras

18 Receivables, Inc.? Are you familiar

19 with that company?

20 A. That's probably the one I

21 was referring to. There were two or

22 three companies with similar names.

23 Q. Were you president and

24 owner of all of those companies?

ESQUIRE DEPOSITION SERVICES

13

Thomas J. Holt, Sr.

1 A. Of what company?

2 Q. NPR Holding Corp.

3 A. No.

4 Q. Who were the officers of

5 NPR Holding Corp.?

6 A. In the time frame I'm

7 thinking of, it would have been my son

8 Thomas, Jr., would have been the

9 president. He probably resigned at a

10 point in time to the trustee, but I'm

11 not familiar with that.

12 Q. Were there any other

13 officers?

14 A. I'd have to go find out and

15 look. Remember, Holt Group owned those

16 companies.

17 Q. Did you have any office or

18 position with NPR Holding Corp. that you

19 recall?

20 A. I can't recall that. The

21 records will show it.

22 Q. Do you recall whether you

23 were a director of NPR Holding Corp.?

24 A. Same answer.

ESQUIRE DEPOSITION SERVICES

14

Thomas J. Holt, Sr.

1 Q. Do you recall whether you

2 were an officer of NPR, Inc.?

3 A. Same answer.

4 MR. MOLDOFF: Again, with

5 respect to this series of questions, I

6 know you are not limiting it to any

7 particular time period. I assume you

8 mean at any time?

9 MR. ARMSTRONG: Yes, sir.

10 BY MR. ARMSTRONG:

11 Q. Do you recall whether you

12 were a director of NPR, Inc.?

13 A. I would have to go back and

14 look at the records.

15 Q. What is Greenwich

16 Terminals, if you know?

17 A. Greenwich Terminals is a

18 stevedoring company in the port of

19 Philadelphia.

20 Q. How long has Greenwich

21 Terminals existed?

22 A. I don't know. Could be

23 several years.

24 Q. Have you ever had any

ESQUIRE DEPOSITION SERVICES

15

Thomas J. Holt, Sr.

1 position with Greenwich Terminals?

2 A. No, sir.

3 Q. Do you know who the

4 officers of Greenwich Terminals are?

5 A. Officers I would tell you

6 are -- I can't tell you because I really

7 don't know.

8 Q. Do you know who any of the

9 officers of Greenwich Terminals are?

10 A. I would not know as

11 officers. I do know that my son Thomas,

12 is involved in that company. As to what

13 position he holds, I am not aware.

14 Q. Do you know who owns the

15 company?

16 A. I would, again, give you

17 the same answer. You would have to go

18 ask them. I'm not involved in that

19 company.

20 Q. What is your position with

21 Emerald Equipment Leasing?

22 A. At what period of time?

23 Q. Well, today.

24 A. Emerald is owned by me

ESQUIRE DEPOSITION SERVICES

1 today.

2 Q. Are you an officer of
3 Emerald?

4 A. I would be the president.

5 Q. How long have you been
6 president?

7 A. Approximately since the
8 summer of 2000.

9 Q. How long have you owned
10 Emerald?

11 A. Same time frame.

12 Q. As president, what are your
13 duties and responsibilities with respect
14 to Emerald?

15 A. Standard procedures of
16 trying to operate the company through a
17 liquidation of its equipment. Emerald
18 is in bankruptcy.

19 Q. Is it in Chapter 11?

20 A. Yes, sir.

21 Q. How long has Emerald been
22 in Chapter 11?

23 A. Best guess?

24 MR. MOLDOFF: If you know.

ESQUIRE DEPOSITION SERVICES

1 THE WITNESS: I don't know.

2 A couple years, two or three. The
3 documents would show that. I'm sure you
4 have them.

5 BY MR. ARMSTRONG:

6 Q. What do you do in operating
7 the company today?

8 A. I don't operate the
9 company. The company is closed down as
10 an operating company. What we're doing,
11 what I'm trying to do, is to locate the
12 equipment and liquidate it.

13 Q. Is anyone working with you
14 in that regard?

15 A. Yes.

16 Q. Who is working with you?

17 A. I had the assistance of a
18 fellow by the name of Art Davis and
19 Lorraine Robbins.

20 Q. Does Art Davis have a
21 position with Emerald?

22 A. No, sir.

23 Q. Has Art Davis ever held a
24 position with Emerald?

ESQUIRE DEPOSITION SERVICES

1 A. Years ago.

2 Q. When you say "years ago,"

3 can you give me a time frame?

4 MR. MOLDOFF: Again, if you

5 know. Don't speculate.

6 THE WITNESS: When Emerald

7 was formed, whenever that was. I think

8 that was 1996 or '7, back in those days.

9 BY MR. ARMSTRONG:

10 Q. How long did Art Davis,

11 Arthur Davis, remain president?

12 A. I didn't say he was. If I

13 did, he was president, just to clear up

14 your record. I think if you go back, you

15 might see you jumped a question there.

16 It matters not.

17 He was the president from

18 when the company was formed. I took it

19 over from he and its other investors I'm

20 going to tell you sometime in the summer

21 of 2000, to my best recollection.

22 Q. Who were the other

23 investors?

24 A. Several people that I had

ESQUIRE DEPOSITION SERVICES

19

Thomas J. Holt, Sr.

1 working with me over the years as
2 qualified people in my business. They
3 were -- individuals? You want to know
4 names?

5 I could guess of a name
6 like Mark Goldman. That's just off the
7 top of my head. I don't remember who
8 they were.

9 Q. How long has Art Davis
10 worked for you?

11 A. Art Davis --

12 MR. MOLDOFF: Object to the
13 form.

14 THE WITNESS: In what
15 company?

16 BY MR. ARMSTRONG:

17 Q. In any company in which you
18 have been involved.

19 A. I have worked with Art off
20 and on for at least 30-plus years.

21 Q. In any particular
22 companies?

23 A. It would have been the
24 companies I owned.

ESQUIRE DEPOSITION SERVICES

20

Thomas J. Holt, Sr.

1 Q. Do you recall the names of

2 any of them?

3 A. You named them. There was

4 Holt Cargo Systems and eventually

5 then -- primarily, Holt Cargo Systems is

6 my best recollection.

7 Q. What is Lorraine Robbins

8 doing in connection with Emerald?

9 A. Well, she is assisting Art,

10 primarily, and I, in trying to get the

11 invoicing resolved between Emerald and

12 Sea Star and she is assisting in all the

13 paperwork that that demands.

14 Q. How long has Lorraine

15 Robbins had anything to do with Emerald?

16 A. That's a good question. I

17 would probably tell you since about

18 sometime in '03 maybe is what I can

19 recollect.

20 Q. Did you give her specific

21 instructions in regard to Emerald?

22 A. Specific instructions in

23 regards to what?

24 Q. In regard to the work that

ESQUIRE DEPOSITION SERVICES

21

Thomas J. Holt, Sr.

1 she would do for Emerald or in
2 connection with Emerald beginning in
3 '03.

4 A. I requested Lorraine to try
5 to resolve the differences between Sea
6 Star and Emerald and all the
7 documentation that that ensued.

8 Q. How did you know Lorraine
9 Robbins?

10 A. Oh, about 45 years ago she
11 came to work for me.

12 Q. She has worked in your
13 companies?

14 A. Yes, sir.

15 Q. Has she ever been an
16 officer of any of your companies?

17 A. She was an officer of my
18 company, Holt Cargo Systems.

19 Q. Was she an officer of Holt
20 Group, Inc.?

21 A. I don't recall.

22 Q. Has she ever been a
23 director of any of the companies in
24 which you've been involved?

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22

Thomas J. Holt, Sr.

1 A. Holt Cargo Systems.

2 Q. Any others?

3 A. She may have been with the

4 real estate holding company, Holt

5 Hauling & Warehousing, but I would have

6 to check those records. This is all to

7 the best of my knowledge. So if you

8 know something specifically, maybe I can

9 help you out.

10 Q. You mentioned Mark

11 Goldman. Who is he?

12 A. He was a gentleman that

13 worked with me for a number of years and

14 left the company about eight years ago,

15 maybe ten. Probably eight. Closer to

16 eight than it would be to ten.

17 Q. Left what company?

18 A. Holt Cargo Systems. I'm

19 trying remember in those days if I

20 operated under the name of Holt

21 Warehousing. I might have operated a

22 company called Holt Warehousing, but he

23 was in the refrigerated warehouse side

24 of our company -- my company.

ESQUIRE DEPOSITION SERVICES

23

Thomas J. Holt, Sr.

1 Q. Did he have any involvement

2 with Emerald?

3 A. He was long gone before

4 Emerald. Maybe -- I don't remember.

5 Yeah, he might have. I don't remember.

6 You are back in 1997 now, I guess, which

7 would be over just about eight years

8 ago. He might have been.

9 Involved in Emerald as to

10 the extent of -- I would go back and

11 tell you he was involved with Emerald.

12 He was one of the stockholders, to my

13 knowledge, of Emerald when it was

14 formed.

15 Q. Was Lorraine Robbins a

16 stockholder of Emerald?

17 A. Not to my knowledge.

18 Q. Was --

19 A. She might have been, but

20 not to my knowledge.

21 Q. Was Arthur Davis a

22 stockholder of Emerald?

23 A. Yes.

24 Q. Do you know what percentage

ESQUIRE DEPOSITION SERVICES

1 of stock Arthur Davis owned?

2 A. Not off the top of my head.

3 Q. Is Arthur Davis one of the

4 people that you bought out in 2000?

5 A. He would have been, yes.

6 Q. Do you know what percentage

7 of stock Mark Goldman owned?

8 A. I would have to go pull

9 those files, if they're still around. I

10 don't even know if they are still

11 around. I would have to find them

12 somewhere.

13 Q. Do you recall who the other

14 investors in Emerald were?

15 A. One was John Whitely, and

16 I'm guessing to the rest of them. I

17 won't do that.

18 Q. What was John Whitely's

19 relationship to your companies?

20 A. He was my CFO, I believe.

21 Yes, his duties as accountant would have

22 covered -- no, he was not my CFO. He

23 would have been my accountant.

24 Q. For any particular

ESQUIRE DEPOSITION SERVICES

1 companies?

2 A. For Holt Cargo Systems.

3 Q. Other than resolving or

4 attempting to resolve the Sea Star

5 accounts, does Emerald do any business

6 today?

7 A. Only liquidation of

8 equipment.

9 Q. When you say "liquidation,"

10 are you talking about selling equipment?

11 A. Emerald's equipment,

12 period.

13 Q. You are talking about

14 selling Emerald's equipment; correct?

15 A. That's right.

16 Q. Does Emerald lease Emerald

17 equipment to anyone today?

18 A. Never did to anyone any

19 time. Only Sea Star.

20 Q. Did Emerald ever lease

21 equipment to NPR, Inc.?

22 A. You are talking prior to

23 Sea Star?

24 Q. Well, first of all, does

ESQUIRE DEPOSITION SERVICES

1 Emerald lease equipment to anyone today?

2 A. No.

3 Q. Prior to today, has Emerald

4 ever leased equipment to anyone?

5 MR. MOLDOFF: At any time?

6 MR. ARMSTRONG: At any time.

7 THE WITNESS: Prior to today

8 and also prior to the failure of the

9 trustee to pay rent to Emerald, he was

10 the trustee of The Holt Group, the only

11 other company other than Sea Star that

12 Emerald leased equipment to was The Holt

13 Group -- correction -- to Navieras, NPR,

14 as you call them, who was a member of

15 The Holt Group.

16 There you go. I got it

17 right now; right?

18 BY MR. ARMSTRONG:

19 Q. Well, is there a difference

20 between Navieras, as you used the term,

21 and NPR?

22 A. I look it as one in the

23 same.

24 Q. So we are talking about the

ESQUIRE DEPOSITION SERVICES

1 same company; correct?

2 A. Same -- well, I can't tell

3 you you are talking about the same

4 company because the legalese of it, but

5 I can tell you, in my mind, one moment

6 you will hear people talk of Navieras

7 and another NPR. I always treat it as

8 one.

9 Whether that's a legal

10 determination or not, I'm sorry. But

11 that company leased from Emerald the

12 equipment it needed, NPR/Navieras, to

13 operate its business.

14 Q. Now, when that company was

15 leasing equipment, did Emerald have

16 employees? That is, when NPR was

17 leasing equipment from Emerald, did

18 Emerald have employees?

19 A. I really couldn't tell

20 you. I don't know.

21 Q. When NPR was leasing

22 equipment from Emerald, did you have any

23 day-to-day involvement?

24 A. Yes.

ESQUIRE DEPOSITION SERVICES

1 Q. What was your involvement?

2 A. When NPR was leasing the
3 equipment?

4 Q. Yes, sir.

5 A. My involvement was to make
6 sure that Emerald got paid.

7 Q. Other than that, what was
8 your involvement?

9 A. Not much of anything than
10 that agreement with NPR they were
11 responsible for all the Emerald
12 equipment. So they operated it, they
13 repaired it, they did whatever they had
14 to do to that equipment. Emerald did
15 not need people.

16 Q. Did NPR do all of the
17 inventories of equipment?

18 A. Yes.

19 Q. Did NPR report to anyone at
20 Emerald concerning the status of
21 equipment?

22 A. No. When you say "status,"
23 you mean where it was? What do you mean
24 when you say "status"?

ESQUIRE DEPOSITION SERVICES

1 Q. Where it was?

2 A. No, because it was the

3 responsibility of NPR, similar to the

4 Sea Star lease somewhat.

5 Q. Did NPR report to Emerald

6 concerning the condition of the

7 equipment?

8 A. No.

9 Q. When you say that NPR's

10 responsibility was similar to the Sea

11 Star lease, what do you mean?

12 A. Possession, movement of the

13 equipment, maintenance of the equipment,

14 responsibility for the equipment,

15 whether it be stolen, damaged,

16 whatever. The documents speak for

17 themselves.

18 Q. Whatever the written lease

19 or written agreement says is what --

20 MR. MOLDOFF: Objection.

21 Q. -- the responsibility was?

22 Is that what you mean when you say "the

23 documents speak for themselves"?

24 MR. MOLDOFF: Objection to

ESQUIRE DEPOSITION SERVICES

1 the form.

2 THE WITNESS: We had an

3 objection.

4 MR. MOLDOFF: I object just

5 to the form of the question.

6 MR. ARMSTRONG: He is

7 objecting to my form.

8 MR. MOLDOFF: You can answer

9 the question if you understand what it

10 is that he is asking.

11 THE WITNESS: Well, what I

12 understand is whatever the document

13 says, it says.

14 BY MR. ARMSTRONG:

15 Q. Do you understand that the

16 document defines the responsibilities of

17 Emerald?

18 MR. MOLDOFF: Well, object

19 to the form. You haven't identified

20 what document we're talking about.

21 BY MR. ARMSTRONG:

22 Q. What document are you

23 talking about?

24 A. I'm talking about the

ESQUIRE DEPOSITION SERVICES

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1 document that was put in place for the
2 possession of Sea Star to take over the
3 fleet of Emerald's equipment.

Thomas J. Holt, Sr.

4 Q. Are you talking about the
5 equipment rental agreement?

6 A. I'm talking about the
7 equipment rental agreement. You can
8 call it a rental agreement. I would
9 call it a lease.

10 You talk about a series of
11 e-mails that were exchanged between
12 people. Why don't you introduce the
13 documents and read them into the record,
14 and they are self-explanatory.

15 Q. Other than the equipment
16 rental agreement and the series of
17 e-mails, are you aware of any other
18 documents that define Emerald's
19 responsibilities in connection with the
20 equipment?

21 MR. MOLDOFF: Object to the
22 form of the question to the extent it
23 asks for a legal conclusion.

24 You can answer whatever you

ESQUIRE DEPOSITION SERVICES

1 understand.

2 THE WITNESS: Well, I don't
3 understand when he says "Emerald's
4 responsibilities," because Emerald's
5 responsibilities are spelled out in
6 whatever the documents are.

7 BY MR. ARMSTRONG:

8 Q. Are you aware of any
9 documents, besides those that you have
10 mentioned, the agreement and the series
11 of e-mails, that define Sea Star's
12 responsibilities with respect to the
13 Emerald equipment?

14 MR. MOLDOFF: If you know.

15 Just answer to the best of your ability.

16 THE WITNESS: I don't know.

17 Whatever is the total paper flow that
18 you have been reading is what it is.

19 I think somebody killed
20 about seven forests right now to crank
21 out all this paperwork.

22 BY MR. ARMSTRONG:

23 Q. When you say "total paper
24 flow," you are covering a lot of

ESQUIRE DEPOSITION SERVICES

1 territory, a third of New Hampshire.

2 A. True, true.

3 Q. What was your understanding

4 of the arrangement between Emerald and

5 Sea Star with respect to Sea Star's use

6 of Emerald's equipment?

7 A. My understanding is that

8 Sea Star needed the equipment to

9 complete the mission statement of the

10 acquisition of Navieras and that when

11 they got done with the equipment, they

12 would turn it back so we could sell it

13 and liquidate it.

14 Q. Were you liquidating

15 equipment, or Emerald equipment, during

16 the time that Sea Star was using Emerald

17 equipment?

18 A. Yes, sir.

19 Q. Was Emerald doing that or

20 was someone else doing that?

21 A. Well, we had several people

22 doing it. There were agents out in the

23 highways and byways that when equipment

24 became available or it was not in the

1 use of Sea Star, that we would sell it.

2 Sea Star bought a lot of equipment,

3 also.

4 Q. And how was MBC Leasing

5 involved in the Emerald equipment?

6 A. They held the -- without

7 legalese, they held the financial

8 interests on the equipment.

9 Q. How long had MBC Leasing

10 held the financial interest on the

11 Emerald equipment?

12 A. A couple years.

13 Q. Did there come a time when

14 MBC Leasing took control of the Emerald

15 equipment?

16 MR. MOLDOFF: Object to the

17 form.

18 THE WITNESS: I don't

19 understand what you mean by "control."

20 Did they physically take possession?

21 Not to my knowledge. It was always in

22 the possession of Emerald, to my

23 knowledge.

24 Emerald assisted MBC in

ESQUIRE DEPOSITION SERVICES

1 trying to collect monies anywhere they
2 could, including from Sea Star,
3 attempting to properly invoice the
4 leasing of the equipment to Sea Star and
5 the liquidation of equipment that Sea
6 Star was not using so the money could
7 flow to MBC.

8 BY MR. ARMSTRONG:

9 Q. Was MBC in charge?

10 A. In charge of what?

11 MR. MOLDOFF: Objection.

12 BY MR. ARMSTRONG:

13 Q. Of the liquidation of the

14 equipment.

15 A. Not to my knowledge.

16 Q. Who was in charge?

17 A. Emerald and indirectly MBC,

18 because they also would liquidate

19 equipment and send us notices so we

20 could take it off the inventory control.

21 Q. How long have you known

22 Robert Magee?

23 A. Bob? I have known Bob

24 probably off and on for, guesstimate,

ESQUIRE DEPOSITION SERVICES

1 ten years.

2 Q. How did you first come to
3 know Bob Magee?

4 A. Through Tote, T-O-T-E. I
5 would say he -- in his capacity there.
6 I assume it's Tote. I don't know what
7 company he works for.

8 Probably in about '97 I got
9 to know Bob more directly through
10 meetings in Seattle, their home office,
11 prior their entrance into the Puerto
12 Rican service, Sea Star that is.

13 Q. Did you or any of your
14 companies ever do business with Tote?

15 A. Did we ever do business
16 with Tote? As a stevedoring company,
17 no.

18 Q. As anything.

19 A. No, I can't remember that.

20 At any time?

21 Q. At any time.

22 MR. MOLDOFF: If you know.

23 THE WITNESS: I don't know.

24 I'd have to -- maybe Bob can help you.

ESQUIRE DEPOSITION SERVICES

1 I don't recall doing anything with
2 them. We might have gave them labor,
3 although I'm not sure, on ships.

4 BY MR. ARMSTRONG:

5 Q. Have you or any of your
6 companies ever done business with any
7 company in which you knew Bob Magee was
8 involved?

9 A. Sea Star.

10 Q. What business have you done
11 with Sea Star?

12 A. Leased them equipment.

13 Q. Other than that, has there
14 been any business?

15 A. Well, I can't specifically
16 tell you, but I seem to recall that we
17 assisted them when they were starting up
18 as Sea Star in the Puerto Rican
19 service. I may be wrong.

20 But there's a recollection
21 that we might have assisted them somehow
22 in terminal services or berths for their
23 ships or something, but that you are
24 taking me way back.

ESQUIRE DEPOSITION SERVICES

1 Q. Were you involved in the
2 NPR sale of certain assets to Sea Star?

3 MR. MOLDOFF: Object to the
4 form.

5 BY MR. ARMSTRONG:

6 Q. In the bankruptcy
7 proceeding.

8 A. No. In the bankruptcy
9 proceeding, that would have been the
10 trustee and maybe my son Tom.

11 I'm trying to go back to
12 your prior question and it seems to me
13 we assisted them with cranes in Puerto
14 Rico when they were starting up.

15 Since '97, I would normally
16 see Bob at least two or three times a
17 year when he comes back east. His
18 family is back here. He would stop in
19 and say hello.

20 Q. Was this a business call or
21 a social call, to your understanding?

22 A. It was always a business
23 call dealing more with what was going on
24 in the industry, who was building ships,

ESQUIRE DEPOSITION SERVICES

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Thomas J. Holt, Sr.

1 what trade routes were they looking at
2 versus Navieras joint ventures, if at
3 all possible, the determination of how
4 much is owed by Sea Star to Emerald, et
5 cetera.

6 There was never a question
7 about you owing us money. That's a
8 foregone conclusion agreed to by your
9 people. It's really a question of how
10 much.

11 Q. When you say "you," you are
12 not talking about me, are you?

13 A. Well, I don't know you,
14 Mr. Armstrong. Are you of counsel of
15 Sea Star? Do you work for them or do
16 you have your own firm? I don't know.

17 I always presumed that you,
18 along with Mark and Bob, run Sea
19 Star/Tote/ Saltchuk.

20 Q. Who is Mark?
21 A. I don't know what he does
22 today. The son-in-law of the owner of
23 Saltchuk. Mark -- what's Mark's last
24 name? Do you remember him?

ESQUIRE DEPOSITION SERVICES

1 MR. EVANS: Talbot.

2 THE WITNESS: Talbot. Yes.

3 He is a very good friend of my son

4 Tom's.

5 BY MR. ARMSTRONG:

6 Q. Have you communicated with

7 Mark Talbot in connection with Emerald

8 equipment?

9 A. I personally have not.

10 Q. You have communicated with

11 Bob Magee in connection with Emerald

12 equipment; correct?

13 A. How much they owe us, yes.

14 Q. Have you and Mr. Magee ever

15 been involved in settlement discussions?

16 A. You could not call it

17 settlement discussions. It was more of

18 a range. Bob did not agree with the

19 range. And, consequently, I said to

20 him, "Well, how are we going to resolve

21 this?" We agreed it would have to go to

22 litigation.

23 Q. When you say "range," what

24 do you mean?

ESQUIRE DEPOSITION SERVICES

1 A. Well, he thought it was one
2 number and I thought it was another.

3 Q. What number did he think it
4 was, to your recollection?

5 MR. MOLDOFF: I object to
6 the questions about settlement to the
7 extent they are not relevant pursuant to
8 the Rules of Evidence.

9 BY MR. ARMSTRONG:

10 Q. Go ahead and answer.

11 A. He was less than \$100,000.

12 Q. And what figure was your
13 figure, if you recollect?

14 A. It's what it has been
15 invoiced at, probably close to \$5
16 million. Whatever the numbers are, they
17 are.

18 Q. Have you seen invoices for
19 \$5 million?

20 A. No. I have seen invoices
21 that could total up to \$5 million.

22 Q. When did you last look at
23 Emerald invoices?

24 A. Several months ago.

ESQUIRE DEPOSITION SERVICES

1 Q. Do you know Brian Bogan?

2 A. I might have met -- is he

3 their CFO? What's Brian do with the

4 company?

5 Q. He is with Saltchuk.

6 A. He is with Saltchuk.

7 If he is their CFO, I might

8 have met him early on when I used to go

9 out there and pay a courtesy visit.

10 Q. Did you have any

11 communications with him in connection

12 with Emerald equipment?

13 A. I don't recall.

14 Q. Do you know Mike Shea?

15 A. The gentleman that was

16 running Sea Star in Puerto Rico, Mike

17 Shea?

18 Q. Well, he was president of

19 Sea Star.

20 A. Mike did a lot of things.

21 If it's the same guy we are talking

22 about, I know him. I never had anything

23 to do with him with regards to Emerald.

24 Q. Do you know Phil Bates?

ESQUIRE DEPOSITION SERVICES

1 A. Probably to have met when I
2 was going through Puerto Rico. Don't
3 really know him.

4 Q. Do you recall whether you
5 had any communications with him in
6 regard to Emerald?

7 A. I think there's some
8 e-mails back and forth, but that's long
9 done for me.

10 Q. Do you recall
11 communications with any representatives
12 of Sea Star in connection with Emerald
13 equipment?

14 A. There was -- back in the
15 taking over of the fleet by Sea Star,
16 there was some e-mails went back and
17 forth, some to my son. I saw them then.

18 I'm trying to remember if
19 there was any directly from Shea. I
20 don't think so. And I don't think there
21 any directly from Bob Magee. And I
22 don't think there was any from Brian --
23 did you say -- your CFO.

24 Q. Brian Bogan.

ESQUIRE DEPOSITION SERVICES

1 A. Bogan? There might have
2 been. There was a lot of paperwork
3 flying around in those days. And as I
4 told you earlier, I was in the throes of
5 losing my company, so it was a very
6 confusing time for me.

7 Q. Were you involved in the
8 negotiations for the Sea Star purchase
9 of certain assets from NPR?

10 MR. MOLDOFF: Object. I
11 think this was asked and answered.

12 THE WITNESS: Third party,
13 because the trustee controlled that.

14 BY MR. ARMSTRONG:

15 Q. Before the trustee took
16 over, did you have any involvement?

17 A. Yes. There was always
18 conversation with Sea Star prior to the
19 bankruptcy of Navieras or the filing of
20 it. We were always trying to see if
21 there was a common ground to work
22 together.

23 They needed more space on
24 the marine terminal in Puerto Rico and

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Thomas J. Holt, Sr.

1 we were trying to see how we could come
2 together. We talked about buying out
3 certain stockholders back in the early
4 days. We talked about joint ventures.
5 We talked about cranes.

6 And, as I said, more lineal
7 footage for their ships to dock, what
8 would be the ability to use our space,
9 et cetera. There was always that kind
10 of cooperation going back and forth.

11 Q. Were you conversing with
12 any particular people that you
13 understood represented Sea Star?

14 MR. MOLDOFF: Object to the
15 form.

16 THE WITNESS: As what?

17 BY MR. ARMSTRONG:

18 Q. During that time.

19 A. At that time? I was
20 involved in the conversations. My son
21 Tom would be, yes.

22 Q. With whom were those
23 conversations occurring?

24 A. I remember having several

ESQUIRE DEPOSITION SERVICES

1 meetings with Mark Talbot, Bob Magee.

2 They would -- I don't know if they ever

3 had their local guy in. Mike Shea, for

4 sure, was there.

5 Traditionally they would

6 take place in Puerto Rico and sometimes

7 in Seattle, sometimes in Philadelphia.

8 There was always a cooperative spirit

9 between the two companies prior to my

10 having to file bankruptcy.

11 Q. Did there come a time -- or

12 there came a time when the bankruptcy

13 was filed --

14 A. Yes.

15 Q. -- and there was bidding

16 for assets of NPR, Inc.; correct?

17 A. No. When you use the word

18 "bidding," I don't know how you mean

19 it.

20 The time that I was

21 involved as the trustee in possession,

22 everything I was doing was trying to

23 better the strength of the company

24 financially and look for ways of

1 partners to have the company go on.

2 When you say "bidding," I
3 cannot tell you that I sat down with
4 anybody and said, "Do you want to buy
5 this company?" It was always keep the
6 company alive as a partner, a joint
7 venture to bring financial strength.

8 Q. When you are talking about
9 the trustee, are you referring to a
10 fellow named Thomas Hayes?

11 A. He replaced me.

12 Q. Hayes replaced you?

13 A. Yes. He went off and did
14 his own thing.

15 Q. After Hayes replaced you in
16 your companies -- let me backtrack.

17 Is Hayes the one who wrote
18 you the letter?

19 A. Of firing me?

20 Q. Yes, sir.

21 A. Yes, sir.

22 Q. After Hayes replaced you,
23 did you have any involvement in the
24 negotiations for sale of NPR assets?

ESQUIRE DEPOSITION SERVICES

1 A. No. My son Tom might have,

2 but I didn't.

3 I don't want to mislead you

4 here. I was the trustee-in-possession.

5 Then Hayes come in and he became the

6 trustee-in-possession, and under Chapter

7 11 proceedings he was doing everything

8 in his power to sell the company and the

9 assets or merge up with people; okay?

10 Then he fired me, because I

11 was still working for the company in his

12 tenure as the trustee. Shortly after he

13 fired me, he elected to liquidate the

14 company, go to a 7.

15 Q. Do you recall when he fired

16 you?

17 A. It was March of '02.

18 Q. Prior to the time that he

19 fired you, were you involved in efforts

20 to sell NPR assets?

21 A. I was involved in assisting

22 him in people he was talking to, whoever

23 he was talking to, and it was very

24 peripherally.

ESQUIRE DEPOSITION SERVICES

1 He would come back and say
2 to my son or I, or both of us, "What do
3 you think this is worth? How much is
4 that worth? What should we do with this
5 ship? Should we scrap it, repair it?"
6 It was all how do we bring this out of
7 Chapter 11.

8 And then it was sometime in
9 April of '02 that he elected to totally
10 liquidate it, so he went out and tried
11 to sell off the company as an operating
12 asset.

13 Q. After he fired you, did you
14 have any involvement with NPR?

15 A. I can tell you minimal, if
16 any. I did not negotiate the sale of
17 NPR to Sea Star. I did not negotiate
18 the leases on terminals or anything,
19 no.

20 I was sort of standing
21 around there trying to keep the door
22 open for the company to come out of 11.
23 I had no official position.

24 Q. During your discussions

ESQUIRE DEPOSITION SERVICES

1 with Bob Magee, have you and he
2 disagreed on anything in regard to the
3 Emerald equipment other than the range?

4 A. A range of what was owed?

5 Q. Well, you indicated that he
6 mentioned one figure and you mentioned
7 another.

8 A. Well, was there any other
9 disagreements? Not to my knowledge.

10 Q. What is your understanding
11 of the basis for the disagreement?

12 A. The amount of money.

13 Q. Other than the amount of
14 money, do you disagree on or have you
15 discussed any disagreements on
16 interpretation of the equipment
17 agreement?

18 A. I assume that's why we're
19 in litigation.

20 Q. Did you and Mr. Magee
21 discuss any of that?
22 A. No. The agreement is the
23 agreement. We never got into what does
24 Paragraph 3 mean, if there is a

ESQUIRE DEPOSITION SERVICES

1 Paragraph 3.

2 The agreement is the
3 agreement. It really comes down to,
4 obviously, he believes that he doesn't
5 owe money and I believe he does.

6 Q. Have you and he discussed
7 why he believes that he doesn't owe
8 money?

9 A. No, we never got into that.

10 Q. Have you and he discussed
11 why you believe that he owes a certain
12 amount of money or that Sea Star owes a
13 certain amount of money?

14 A. Except for the underlying
15 documents of invoicing and the
16 methodology of invoicing, we never
17 really specifically talked anything but
18 what could be a settlement number.

19 Q. Okay.

20 A. And we were so far apart
21 that it was obvious that we needed an
22 impartial person to come up with the
23 amount.

24 Q. To clear this up, is it

ESQUIRE DEPOSITION SERVICES

1 your understanding that all of your
2 communications with Bob Magee in regard
3 to Emerald Equipment were settlement
4 discussions?

5 A. If you can call settlement
6 to please pay me, I will answer yes.

7 If you are saying that when
8 I say please pay me and he said we
9 disagree on the amount and then it comes
10 down to, well, who is going to
11 adjudicate what is the proper amount, I
12 think we talked peripherally about a
13 tremendous amount of equipment was
14 missing. So if you don't have the
15 equipment, you pay for it.

16 Q. When you say "equipment was
17 missing," did you have an inventory from
18 NPR showing what equipment was on-hire
19 to NPR as of the date --

20 A. Yes.

21 Q. -- of the asset purchase?

22 A. Yes.

23 Q. Did you have inventories
24 from NPR showing what equipment on-hire

1 to NPR was missing as of that date?

2 A. Yes.

3 Q. Were those written

4 inventories?

5 A. Yes.

6 Q. Do you know when those

7 inventories were prepared?

8 A. Daily.

9 Q. Did anyone at Emerald

10 review those inventories?

11 A. When NPR had the company?

12 Q. Yes.

13 A. No.

14 Q. Was anyone at Emerald

15 responsible for reviewing those

16 inventories?

17 A. No. It was the

18 responsibility of NPR to return the

19 equipment when they were done with it.

20 Q. Well, how did Emerald know

21 that the inventories were correct?

22 A. They didn't. They relied

23 on NPR's inventory.

24 Q. Does Emerald have knowledge

ESQUIRE DEPOSITION SERVICES

1 today that the NPR inventories, as of
2 the time of the asset purchase, were
3 correct?

4 A. We have no other reason to
5 assume otherwise. But NPR was
6 responsible for the equipment under the
7 contract with Emerald and NPR.

8 Q. All right. Did you accept
9 those inventories as correct?

10 A. That's correct.

11 Q. And do you still accept
12 those inventories as correct?

13 A. Well, as where they are, if
14 they are still in existence, yes.

15 Q. Are you familiar with the
16 term "POS"?

17 A. POS?
18 Q. Yes. Or "put out of
19 service, permanently out of service"?

20 A. It could be a definition
21 used in the industry.

22 Q. Are you familiar with that?
23 A. I know of the term, yes. I
24 never paid much attention to it, but

1 that's okay.

2 Q. What is your understanding

3 of the meaning of that term?

4 A. That if it's out of

5 service, it is awaiting to be repaired

6 to be put back into service.

7 Q. Are you familiar with a

8 term "permanently out of service"?

9 A. Same meaning, I'd imagine.

10 Q. Do you recall whether any

11 Emerald equipment was permanently out of

12 service, according to NPR reports, as of

13 the time of the asset sale?

14 A. Well, in an 11,000-piece

15 fleet, there is equipment that is

16 permanently out of service, a

17 percentage, or in the event of awaiting

18 repairs.

19 That didn't concern Emerald

20 because NPR was responsible for all that

21 equipment under the agreement between

22 NPR and Emerald.

23 Q. Whether or not the

24 equipment was permanently out of

ESQUIRE DEPOSITION SERVICES

1 service, was NPR responsible for paying

2 per diem charges?

3 A. They were responsible for

4 paying a sum of money each month for all

5 the equipment, because if it was

6 permanently out of service, it's because

7 it was done on their watch.

8 If it was out of service

9 for repairs, they are responsible, not

10 unlike your agreement that Sea Star has

11 with Emerald. You break something in

12 half, you are going to fix it.

13 Q. Would it be fair to say

14 that NPR was responsible to pay a

15 certain amount per month whether or not

16 the equipment had been lost?

17 A. If they lost it, they are

18 responsible for it, and, yes, there was

19 a certain price per month.

20 Q. And if it was lost, they'd

21 keep paying for it as part of that

22 price; correct?

23 A. They would either keep

24 paying for it or they would pay for the

ESQUIRE DEPOSITION SERVICES

1 piece of equipment under the agreement
2 with NPR. That's standard procedure in
3 the industry.

4 Q. Are you aware of any
5 prohibitions by Emerald against NPR
6 paying the value of lost equipment?

7 A. You mean -- "prohibitions"
8 means what?

9 MR. MOLDOFF: Object to the
10 form.

11 THE WITNESS: The agreement
12 was the agreement. Whatever it was, it
13 was.

14 BY MR. ARMSTRONG:

15 Q. And if NPR paid the value
16 of the lost equipment, did that change
17 the amount of the monthly payment that
18 NPR would make?

19 A. I don't know of any
20 agreement -- you got a real reach here.

21 Now you are going back several years. I
22 don't know if the agreement was per day
23 per unit or replacement value if it was
24 lost or it was a flat sum of money over

1 a period of years while they had the
2 whole fleet in their possession and
3 responsible for the whole fleet.

4 MR. MOLDOFF: Just as a
5 general instruction, I think
6 Mr. Armstrong would tell you the same
7 thing, you shouldn't speculate. Or if
8 you are, say that you are.

9 THE WITNESS: Then I don't
10 want to comment then. I will just sit
11 here and look stupid.

12 MR. MOLDOFF: You don't have
13 to do that. You are not doing that.

14 BY MR. ARMSTRONG:

15 Q. Do you know Bob Leetch?
16 A. I know the name. I'm
17 trying to recall how I know it. Did he
18 work for me?

19 Q. No. He worked for Sea
20 Star.

21 A. He worked for Sea Star?

22 Q. He was Sea Star's CFO.

23 A. You mean they had two CFOs,
24 Brian and Leetch?

ESQUIRE DEPOSITION SERVICES

1 Q. Leetch was Sea Star's CFO.

2 Did you ever meet him?

3 A. I know the name, I just
4 couldn't put it in what context. An
5 awful lot of our people left and went
6 over to Sea Star, an awful lot of
7 Navieras people.

8 Q. Did you ever have any
9 communications that you recall with Bob
10 Leetch?

11 A. I probably did.

12 Q. Do you recall what they
13 were?

14 A. No. Probably please pay,
15 something of that nature. Might have
16 sent him e-mails, might have wrote him,
17 maybe he might have wrote me. I don't
18 recall.

19 Q. Do you recall whether you
20 had any communications with him in
21 connection with the asset sale, the NPR
22 asset sale?

23 A. I would tell you that was
24 mostly Mr. Hayes and my son Tom.

ESQUIRE DEPOSITION SERVICES

1 Q. When you say your son Tom,

2 we're referring to Tom, Jr.?

3 A. Well, he is my son, Tom.

4 I'm senior, so he is junior, but that

5 don't mean necessarily that you read

6 that on correspondence, junior or

7 senior.

8 Q. I understand.

9 You want to take a break?

10 A. No, I'm just going to have

11 a little water.

12 Q. Let me show you a copy of a

13 document that has been marked as

14 Exhibit 1 to the Emerald deposition.

15 Do you recall whether you

16 have seen that document before?

17 A. This document was generated

18 when Emerald was formed and they did the

19 contract with MBC. I had seen it.

20 MR. MOLDOFF: This document

21 has certain markings on it and I don't

22 know whose markings they are. I think

23 when you said you have seen this

24 document, you mean generically -- not

ESQUIRE DEPOSITION SERVICES

1 generically, but --

2 THE WITNESS: Yes.

3 MR. MOLDOFF: The document

4 is called a loan and security agreement.

5 THE WITNESS: Have I ever

6 read it? I don't know.

7 MR. MOLDOFF: It may or may

8 not have had those markings on there.

9 Is that fair?

10 THE WITNESS: I'm sure it

11 did back in those days. This was -- it

12 is marked November '97. This is the

13 financing agreement between Emerald and

14 MBC.

15 BY MR. ARMSTRONG:

16 Q. Do you recall reading that?

17 A. Not specifically line for

18 line, no; but I recall it.

19 Q. What was your relationship

20 to Emerald in November 1997 when that

21 paper was signed?

22 A. My relationship would have

23 been as the owner of Navieras. And Mark

24 Goldman and Art Davis at some period of

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1 time throughout their careers worked for
2 me, and I suggested that they would form
3 this company and take advantage of
4 whatever taxes and such that this
5 corporate form would do for them. That
6 was my relationship.

7 Q. Did Art Davis form Emerald?

8 A. No.

9 Q. Who formed Emerald?

10 A. Emerald was formed at the
11 same time Navieras was formed. So the
12 law firm would have been the guys that
13 formed the companies.

14 The time frame Emerald was
15 formed, I was the one that suggested
16 that it be formed for the leasing of the
17 Navieras equipment to Navieras. There
18 was needed the ability to finance \$35
19 million, so I suggested that we
20 establish this company owned by my key
21 employees over the years and they then
22 would lease the equipment back to
23 Navieras.

24 Q. Am I correct in

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1 understanding that you suggested that
2 Art Davis, Mark Goldman, and perhaps
3 others, form Emerald to lease equipment
4 to Navieras or NPR?

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5 A. One in the same, in my
6 mind, yes.

7 Q. In November 1997 was Art
8 Davis an owner of Emerald?

9 A. When the company was
10 formed, yes.

11 Q. Did he remain an owner of
12 Emerald through the buyout in 2000?

13 A. Yes.

14 Q. And in 2000 you bought Art
15 Davis and others out?

16 A. And the other stockholders
17 out, yes.

18 Q. Now, did you individually
19 buy them out or did you do it through a
20 corporation or corporations?

21 A. However my attorney told me
22 to do it. I think I did it as an
23 individual. I can't recall.

24 Q. Were they paid cash for

ESQUIRE DEPOSITION SERVICES

1 their interest in Emerald?

2 A. No. The cash to the value

3 of it? No. I took them out for a price

4 of a dollar.

5 Q. Why would they agree to be

6 taken out for the price of a dollar?

7 A. They didn't want to be

8 obligated to MBC anymore as Emerald.

9 They also did not want to continue.

10 They just -- at that time

11 they had advice that said that the

12 ownership of Emerald as an individual

13 did not give them what they were looking

14 for, which was depreciation. So they

15 sought advice and the advice was sell

16 it, so I bought it back.

17 Q. Did they receive anything

18 other than the dollar for Emerald?

19 A. That's all I gave them.

20 Q. Do you know whether anyone

21 else gave them anything?

22 A. Who?

23 Q. Gave Art Davis, Mark

24 Goldman and any other investors for

ESQUIRE DEPOSITION SERVICES

1 their interest --

2 A. Who would the other people

3 be who would give it?

4 Q. I have no idea. I'm asking

5 you whether you know.

6 MR. MOLDOFF: Object to the

7 form of the question.

8 THE WITNESS: No, I don't

9 know of anyone.

10 BY MR. ARMSTRONG:

11 Q. I show you a document

12 entitled "Assignment of Lease as

13 Security" which has been marked as

14 Exhibit 2 to the Emerald deposition.

15 Have you seen that document

16 before?

17 A. Your question is, sir?

18 Q. Have you ever seen that

19 before?

20 A. Yes, I have.

21 Q. It's your signature on the

22 last page?

23 A. Yes, sir.

24 Q. Was Holt Cargo Systems,

ESQUIRE DEPOSITION SERVICES

1 Inc., leasing equipment from anyone at

2 the time that you signed that?

3 A. Not to my knowledge.

4 Q. Do you know why Holt Cargo

5 Systems, Inc., signed that document?

6 A. Because the bank wanted it.

7 Q. Was Holt Cargo Systems,

8 Inc., leasing equipment from anyone at

9 that time?

10 A. Not that I'm aware of.

11 They could have been, as I said,

12 peripherally in their stevedoring

13 business, but I'm not aware of that.

14 Q. Let me show you a copy of a

15 document entitled "Order authorizing

16 sale of the NPR assets free and clear of

17 all liens, claims, and encumbrances,"

18 which has been marked as Exhibit 4 to

19 the Emerald deposition.

20 Have you seen that document

21 before?

22 A. This is the bankruptcy?

23 Q. Yes.

24 A. I can't tell you that I saw

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Thomas J. Holt, Sr.

1 this particular document, but I read an
2 awful lot of documents. Whatever this
3 document is, I can't relate to it
4 legally, but I assume this is where the
5 bank went in -- I'm not going to
6 assume. It says what it says.

7 Q. Have you seen it before?

8 A. I'm sure I have.

9 Q. Do you recall any
10 arrangement in connection with the asset
11 sale that Sea Star would store, keep
12 equipment in storage, on properties
13 acquired during that sale?

14 By "equipment" --

15 A. For who?

16 Q. -- I'm specifically -- for

17 Emerald.

18 MR. MOLDOFF: Object to the
19 form.

20 THE WITNESS: There was an
21 agreement -- and this is going back a
22 little bit for me -- that Sea Star was
23 storing equipment for Emerald, which
24 either the bank paid or Emerald paid. I

ESQUIRE DEPOSITION SERVICES

1 don't recall how it worked.

2 BY MR. ARMSTRONG:

3 Q. Do you recall how that

4 agreement came into being?

5 MR. MOLDOFF: Object to the

6 form of the question.

7 THE WITNESS: Not sitting

8 here today.

9 MR. MOLDOFF: There's no --

10 THE WITNESS: Go ahead.

11 MR. MOLDOFF: There's really

12 no time frame right now. At what point

13 in time are we talking about?

14 MR. ARMSTRONG: Any time.

15 BY MR. ARMSTRONG:

16 Q. Were you involved in

17 negotiating any agreement for storage of

18 Emerald equipment in terminal areas

19 acquired by Sea Star as part of the NPR

20 asset sale?

21 A. No.

22 MR. MOLDOFF: When he says

23 "you," he means you.

24 THE WITNESS: Meaning me as

ESQUIRE DEPOSITION SERVICES

1 the negotiator, no. I was aware of it.

2 BY MR. ARMSTRONG:

3 Q. As participating?

4 A. I was aware of it.

5 Q. How were you aware of it?

6 A. I was told that's what was

7 going to happen between the bank and

8 also Emerald.

9 Q. And who told you that?

10 A. My recollection was Art

11 Davis.

12 Q. Do you know what the

13 arrangements actually were for storage

14 of that equipment?

15 A. I'm trying to recall if

16 Emerald or the bank was paying per

17 acre. I think were paying by the acre.

18 I think that's what I approved.

19 Q. When did you approve that?

20 A. When it happened.

21 Q. Do you recall when that

22 was?

23 A. No. As I told you, that

24 whole period was very confusing to me.

ESQUIRE DEPOSITION SERVICES

1 I was losing my main business, the sale-

2 off by Mr. Hayes of Navieras.

3 I would tell you it's right

4 in that time frame, probably the May,

5 June, July of '02. I'm guessing now.

6 Q. During -- not any

7 particular month, but during that time

8 frame?

9 A. To the best of my

10 recollection, yes; but you would know

11 better than me. The facts are the

12 facts.

13 Q. Well, this Order is dated

14 April 26, 2002.

15 A. Yes.

16 Q. What arrangements did

17 Emerald make after that to pick up

18 equipment that was stored in Sea Star

19 terminal areas?

20 MR. MOLDOFF: Object to the

21 form of the question.

22 BY MR. ARMSTRONG:

23 Q. To your knowledge.

24 A. I don't know what you're

ESQUIRE DEPOSITION SERVICES

1 saying. What arrangement?

2 It would have been

3 according to the agreement that was

4 worked out.

5 Q. Did you ever see a written

6 agreement regarding picking up Emerald

7 equipment from Sea Star terminal areas?

8 A. Only after the fact that

9 Sea Star took possession of the

10 equipment.

11 Q. As of April 26, 2002, there

12 was also Emerald equipment in inland

13 depots; is that correct?

14 A. Under load, yes.

15 Q. Was there Emerald equipment

16 stored in inland depots that was not

17 under load?

18 A. Probably waiting to be

19 loaded, yes.

20 Q. What arrangements did

21 Emerald make to retrieve the Emerald

22 equipment that was not under load in

23 depots?

24 MR. MOLDOFF: Object to the

ESQUIRE DEPOSITION SERVICES

1 form.

2 THE WITNESS: Okay.

3 MR. MOLDOFF: But you can

4 answer.

5 THE WITNESS: In that time

6 frame, none, because it had been turned

7 over to Sea Star to operate the business

8 that they had purchased from Navieras.

9 We did not go after any equipment until

10 several months later.

11 BY MR. ARMSTRONG:

12 Q. Was there a document that

13 turned equipment in inland depots over

14 to Sea Star?

15 A. As far as I was concerned,

16 there was.

17 Q. What was that document?

18 A. It was an understanding

19 that was memorialized, I'm recalling, an

20 e-mail from Sea Star. And then

21 subsequently it was turned into a formal

22 agreement.

23 Q. Now, with respect to the

24 inland depot equipment, were there

ESQUIRE DEPOSITION SERVICES

1 documents signed showing what equipment
2 in each depot was turned over to Sea
3 Star?

4 A. No, because Sea Star was
5 taking all of the equipment at that time
6 and they would return what they did
7 didn't need and what they didn't want.

8 Q. Where did you hear that Sea
9 Star was taking all of the equipment at
10 that time?

11 A. Where did I hear it?
12 Probably in the negotiations between Sea
13 Star and your people, and probably
14 either Art Davis or Tom or could have
15 been Bob Magee. The objectivity was you
16 were continuing the business and you
17 needed the equipment.

18 Q. Where did you get the
19 understanding that Sea Star was
20 continuing the NPR business?

21 MR. MOLDOFF: Object to the
22 form of the question.

23 BY MR. ARMSTRONG:

24 Q. Do you recall?

ESQUIRE DEPOSITION SERVICES

1 A. Do I recall where I got
2 it? I just told you it would have been
3 either from Hayes, who negotiated the
4 sale of the equipment, or it might have
5 been my son. It was a shaking out
6 period for sure. After several months,
7 you would determine what customers you
8 would want to keep or not keep.

9 Q. Was that your understanding
10 of the terms of the asset purchase?

11 A. I did not negotiate the
12 asset purchase.

13 Q. Was that your understanding
14 of the terms?

15 A. My understanding was they
16 were buying the business.

17 Q. Did anyone ever tell you
18 that Sea Star was not buying the NPR
19 business?

20 A. No.

21 Q. Did you ever read the asset
22 purchase agreement?

23 A. Now that's a reach. I
24 don't recall. I could have. I don't

1 remember. If you have it, show it to me

2 and we'll read it.

3 Q. Let me show you a copy of a

4 memorandum dated April 19, 2002, that's

5 been marked as Exhibit 11 to the Emerald

6 deposition. Have you ever seen that

7 before?

8 MR. MOLDOFF: Is the

9 question has he ever seen this before?

10 MR. ARMSTRONG: It was have

11 you ever seen that before, not this.

12 THE WITNESS: I have heard

13 of this document. I have never seen it

14 before.

15 BY MR. ARMSTRONG:

16 Q. Previously you referred to

17 a shakeout period, did you not, in

18 regard to the Sea Star acquisition?

19 A. Yes. I think I said

20 several months.

21 Q. What did you mean by

22 "shakeout"?

23 A. I believe I said that it

24 would take you several months to decide

ESQUIRE DEPOSITION SERVICES

1 what customers you wanted to keep or not
2 keep.

3 Q. What did that have to do
4 with the equipment, the Emerald
5 equipment?

6 A. How much equipment you
7 would have needed then to handle the
8 customers.

9 Q. Did you have discussions
10 about that shakeout with anyone?

11 A. I believe I did, but I
12 can't remember who it was right now. I
13 never anticipated -- well, go ahead.

14 Next question.

15 Q. What did you never
16 anticipate?

17 A. That you would have had
18 this equipment forever. It was always
19 that you would eventually buy what you
20 would have needed.

21 Q. Were you anticipating that
22 Sea Star would buy all of the equipment?

23 A. No, only what you would
24 have needed.

ESQUIRE DEPOSITION SERVICES

1 Q. How did Emerald know what
2 equipment Sea Star was getting, that is,
3 Emerald equipment Sea Star was getting,
4 after April 26th?

5 MR. MOLDOFF: Object to the
6 form.

7 THE WITNESS: Equipment you
8 had in your possession was covered under
9 the Navieras/Emerald inventory.

10 BY MR. ARMSTRONG:

11 Q. As far as you were
12 concerned, Sea Star was taking all of
13 the equipment covered under the Navieras
14 inventory?

15 A. You were taking what the
16 Navieras inventory was to Emerald, which
17 was required to operate the NPR traded
18 book of business that was purchased from
19 Tom Hayes, always understanding that
20 sometime in the future the equipment
21 would be returned or purchased.

22 Q. Was it your understanding
23 that Sea Star was taking all of the
24 equipment --

ESQUIRE DEPOSITION SERVICES

1 A. Yes.

2 Q. -- listed in the Navieras

3 inventory?

4 A. That was my understanding,

5 yes, because we didn't know what Sea

6 Star needed in the way of equipment to

7 facilitate the purchase of Navieras.

8 Q. Am I correct in

9 understanding that Emerald never audited

10 the Navieras inventories?

11 MR. MOLDOFF: If you know.

12 THE WITNESS: I would tell

13 you we never did.

14 BY MR. ARMSTRONG:

15 Q. Is it your understanding

16 that Sea Star was taking POS equipment

17 identified in the Navieras inventory?

18 A. To the extent that they

19 would use it, they would be then --

20 there was a mechanism as to how you

21 would be invoiced for the equipment

22 worked out between the various people.

23 Q. Do you recall what that

24 mechanism was?

ESQUIRE DEPOSITION SERVICES

1 A. They attempted to use it on
2 the basis of when you return the
3 equipment, that TIR would be instituted.

4 Q. Was there a mechanism that
5 a TIR be instituted when Sea Star took
6 possession of the equipment?

7 A. It was impossible. You
8 could not have initiated TIRs for when
9 you took possession at 3:00 a.m. on a
10 given day. Nobody would sit down and
11 write several thousand TIRs. That would
12 be presumptuous.

13 Q. It is your understanding
14 that as of the closing of the NPR asset
15 sale, Sea Star took possession of all
16 equipment, all Emerald equipment, that
17 NPR had been leasing from Emerald;
18 correct?

19 A. It was my understanding
20 that you took possession of all Emerald
21 equipment that NPR was leasing in the
22 operation of their business, and when
23 you got done with the equipment, you
24 would return it and a TIR would be

ESQUIRE DEPOSITION SERVICES

1 issued by Emerald or authorized or
2 acknowledged by Emerald, which would
3 then stop the leasing of the equipment.
4 And in fact that's what happened.

5 Q. And am I correct in
6 understanding that your understanding of
7 this is based on the written agreement
8 and the e-mails exchanged?

9 A. The agreement of what I
10 just said, yes.

11 Q. Has anyone ever told you,
12 said to you, that your understanding in
13 that regard is incorrect?

14 A. As to what I just said, no.

15 Q. As of the closing of the
16 NPR asset sale, were you aware of any
17 equipment on lease to NPR that was being
18 held by third parties, such as vendors
19 or repair yards?

20 A. There was equipment that
21 was held by vendors on monies that NPR
22 owed to them. They were not aware that
23 it was not NPR's equipment; it was
24 Emerald's equipment.

ESQUIRE DEPOSITION SERVICES

1 Q. Do you recall who those

2 vendors were?

3 A. No. There were more than

4 several, but I don't know who they were.

5 Q. Did Emerald take steps to

6 identify the equipment that was being

7 held by these third parties?

8 A. Can you repeat that,

9 please?

10 Q. Did Emerald take steps to

11 identify the equipment that was being

12 held by third parties?

13 A. Eventually.

14 Q. What steps did Emerald

15 take?

16 A. Well, as it sorted itself

17 out over a period of months, maybe

18 years, Emerald then proceeded to take

19 the equipment back. In some cases, we

20 had to get the courts to do it. But

21 specifically I can't sit here and tell

22 you who, where, and why and how much.

23 Q. Well, did Emerald make --

24 A. There is probably still

ESQUIRE DEPOSITION SERVICES

1 equipment out there that people are
2 holding.

3 Q. Was that equipment that was
4 included in the NPR inventory?

5 A. No, no. You only paid for
6 what you got. And the way we finally
7 determined what you had is when you
8 returned it.

9 Q. Now, you are saying that
10 the equipment being held by third
11 parties was not included in the NPR
12 inventory that you received?

13 A. You are being very
14 specific. If you can name equipment
15 numbers, I can go back and research it
16 for you. But there was equipment that
17 was being held by third parties that Sea
18 Star had to have equipment that was
19 required, like chassis to handle the
20 loads that were under load at the time.

21 There was -- I don't
22 know -- a couple thousand loads that
23 were moving then that people could have
24 held. But whether there was equipment

1 that was being held by people that was
2 not turned over to Sea Star because of
3 it being held, the answer is yes.

4 Q. And was that equipment that
5 was not turned over to Sea Star included
6 in the NPR inventories, its lists of
7 equipment?

8 A. That would have been in the
9 NPR inventory because they had the
10 inventory for Emerald. But if it wasn't
11 turned over to you then, you weren't
12 charged for it.

13 You were only charged for
14 what was physically in your possession
15 in the taking of the assets of Emerald
16 by you when you purchased Navieras, and
17 that's all based on your records and the
18 records that are supported by the
19 equipment being returned to the depots,
20 the records of equipment being sold,
21 because, obviously, there was equipment
22 that was not in your possession that was
23 sold by MBC. You were never charged for
24 that stuff.

ESQUIRE DEPOSITION SERVICES

1 Q. Did you use the NPR
2 inventories to determine what equipment
3 was in Sea Star's possession?

4 A. Yes. I would tell you that
5 Emerald did that.

6 Q. Did Emerald ever make
7 specific lists of equipment that was
8 included or on those NPR inventories
9 that was not in Sea Star's possession?

10 A. To the extent for the
11 invoicing to Sea Star, that's how the
12 list was generated.

13 Q. How was the list generated?
14 A. By your acknowledging you
15 had the equipment.

16 Q. How did Emerald determine
17 what equipment was stored and what
18 equipment was being used by Sea Star?

19 A. We were provided lists to
20 Emerald by the bank or directly to
21 Emerald. You turned over inventories to
22 them, "you" being Sea Star.

23 Q. And do you recall reviewing
24 any of those inventories?

1 A. Not specifically, no. I
2 left it in the hands of other people.

3 Q. Did you have any day-to-
4 day, hands-on involvement --

5 A. No.

6 Q. -- in this?

7 Did you review what the
8 other people were doing?

9 A. Yes.

10 Q. And who were those other
11 people?

12 A. Early on, it would have
13 been definitely Art, definitely
14 Lorraine, and they had a couple of other
15 people working with them. They had
16 somebody by the name of -- I don't
17 remember his name -- down in
18 Jacksonville. Frankie -- might have
19 been in Puerto Rico.

20 They had people working in
21 depots. I remember Marty McDonald as a
22 consultant worked for them. But I think
23 we're far off of what your question is,
24 please.

1 Q. And what did you do to
2 review the work that they were doing?
3 A. We spoke daily. We
4 reviewed records, both in person and on
5 the phone, acknowledged how the
6 invoicing should go to Sea Star, under
7 what basis, location of equipment, when
8 equipment would be returned.

9 When equipment was
10 destroyed, we just said, sorry, we're
11 not taking this off of you. I recall
12 some 20 or 30 pieces were destroyed by
13 Sea Star sitting in Puerto Rico.

14 Q. You recall. Did you ever
15 see that equipment?
16 A. Only when I was down there
17 early on operating to get off the
18 terminal equipment, trying to set up how
19 to liquidate the equipment. That was
20 early, early on.
21 Q. When was early, early on?
22 A. It was the summer of '02.
23 Q. You were down in the Sea
24 Star terminal?

1 A. No. I would tell you that
2 then it was a question whether it was
3 CSX or Sea Star, because they made some
4 sort of agreement to share space.

5 Q. Were you in the Sea Star
6 terminal in August or in the summer of
7 '02?

8 A. I believe I was, yes.

9 Q. Let me show you a copy of a
10 document that's been marked as Exhibit 7
11 to the Emerald deposition. Do you
12 recognize the signature on the last
13 page?

14 A. What's the date of this
15 document?

16 Q. I'm just asking whether you
17 recognize the signature.

18 A. I'm sorry to say I don't.
19 Supposition, it could be Tom Hayes, but
20 I can't help you there.

21 Is there a significance to
22 the signature?

23 This is in, evidently, July
24 of '02, if I read this fax date right.

1 Q. Let me show you a copy of a
2 document that's been marked as Exhibit 8
3 to the Emerald deposition. Do you
4 recognize the signature on that
5 document?

6 A. Same answer.

7 Q. Showing you a document
8 that's been marked as Exhibit 9 to the
9 Emerald deposition, copies of e-mails,
10 and specifically pages 2, 3, and 4 from
11 Bill Hallam to T. Holt, Jr. Do you
12 recall seeing that e-mail before?

13 A. No, I have not seen this
14 document.

15 Q. Do you recall or have you
16 ever heard the term "shipments in
17 process"?

18 A. Not particularly. I would
19 know the term "shipment in transit," but
20 "process" if you want to say is
21 "transit," that's okay.

22 Q. Have you ever heard the
23 term "shipment in transit" in connection
24 with NPR and Emerald?

1 A. Not so much between NPR and
2 Emerald, but more between NPR/Sea Star
3 when they bought the company.

4 Q. What was your understanding
5 of the term "shipments in transit" in
6 connection with NPR/Sea Star?

7 A. That they were completing
8 the voyages of the loads and equipment
9 that were in the possession of
10 Navieras/NPR that was turned over to Sea
11 Star through the sale to Sea Star of
12 NPR.

13 Q. What was your
14 understanding as to --
15 A. Are we done with this?
16 Q. What was your understanding
17 as to Emerald's right to bill for
18 equipment used in shipments in transit?

19 A. The term "in transit," of
20 the period of time that was mentioned
21 with Sea Star/NPR, was a statement that
22 was handed out with the bankruptcy
23 judge.

24 I'm trying to recall, but

ESQUIRE DEPOSITION SERVICES

1 my mind seems to say that it was a
2 period of two weeks for product in
3 transit.

4 Q. Did Emerald bill Sea Star
5 for equipment used in shipments in
6 transit?

7 A. For that --

8 MR. MOLDOFF: If you know.

9 THE WITNESS: If I know, in
10 that two-week period, no. If that's the
11 same thing that you are referring to as
12 "in transit" as covered by the judge.

13 BY MR. ARMSTRONG:

14 Q. How did Emerald determine
15 what equipment, that is, what Emerald
16 equipment, was involved in shipments in
17 transit?

18 A. They had the inventory from
19 NPR at that time.

20 Q. Did the inventory from NPR
21 show what equipment was involved in
22 shipments in transit?

23 A. I'm sure it did.

24 Q. Do you recall reviewing

ESQUIRE DEPOSITION SERVICES

1 that inventory?

2 A. No.

3 Q. Let me show you a copy of a

4 document that's been marked as Exhibit 6

5 to the Emerald deposition. Have you ever

6 seen that before?

7 A. Is this the one that

8 establishes in transit?

9 Q. Pardon?

10 A. Is this the document that

11 establishes the in transit by the judge?

12 Q. I'm asking you whether you

13 have seen that document before.

14 A. Well, I'll have to read it,

15 then.

16 I'm sure I have seen it. I

17 don't specifically recall it, but I'm

18 sure I have seen it.

19 Q. Let me show you a copy of a

20 document that's been marked as Exhibit 5

21 to the Emerald deposition. Have you

22 seen that document before?

23 A. Yes, I'm sure I have seen

24 it.

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1 Q. Let me show you a copy of a
2 letter dated April 11, 2002, that has
3 been marked as Exhibit 33 to the Emerald
4 deposition. Have you seen that letter
5 before?

6 A. Yes.

7 Q. Did you prepare that
8 letter?

9 A. No.

10 Q. Who prepared the letter?

11 A. My secretary.

12 Q. Did you dictate to your
13 secretary?

14 A. I dictate to my secretary.

15 This particular letter was sent out
16 under my signature and I'm pretty sure I
17 sent it. It might have been sent by my
18 son Tom, but I'm pretty sure I sent it.

19 Q. Do you recall dictating
20 that letter?

21 A. Specifically this one? No.

22 Q. Do you recall your
23 secretary preparing the letter?

24 A. Yeah. Yes, not yeah.

ESQUIRE DEPOSITION SERVICES

1 Q. Do you recall signing the
2 original?

3 A. Do you have the original?

4 I can look at my signature.

5 Q. I'm asking you whether you
6 recall.

7 A. You are going back to April
8 of '02. I can't recall now.

9 Q. Did you send the letter to
10 Robert Leetch?

11 A. This letter went to
12 Mr. Leetch. I'm trying to remember.
13 We're looking at April of '02. This was
14 possibly -- the attached spreadsheet
15 reflects what we feel is the correct
16 reconciliation.

17 I either did this or
18 possibly my son Leo did. Okay.

19 Q. What was Leo's involvement
20 with Emerald?

21 A. He was more than likely
22 assisting me for a smooth transition.

23 Q. Did he have any involvement
24 with the NPR sale?

ESQUIRE DEPOSITION SERVICES

1 A. No, I don't believe so. He
2 might have been. He might have been
3 trying to help Tom Hayes.

4 Q. Did you have any face-to-
5 face meetings with Robert Leetch?

6 A. I probably did.

7 Q. Do you recall any?

8 A. I don't recall any, but I
9 probably did. There was a team of Sea
10 Star people running in and out of our
11 place for about two weeks. I tried to
12 stay out of the way so I wouldn't hinder
13 them.

14 Q. During this April time
15 frame?

16 A. Sounds about right.

17 Q. Do you recollect any
18 communications with Robert Leetch other
19 than this letter?

20 A. Not that I'm aware of,
21 unless there is e-mails floating around.

22 Q. The first part of Paragraph
23 2 refers to "issues raised by Phil Bates
24 with some of the equipment and the

ESQUIRE DEPOSITION SERVICES

1 current market."

2 Do you see that?

3 A. Yes.

4 Q. What were the issues raised
5 by Phil Bates with some of the
6 equipment?

7 MR. MOLDOFF: Object to the
8 form.

9 THE WITNESS: The letter
10 speaks for itself. If you want
11 supposition, it was probably economic
12 market conditions.

13 BY MR. ARMSTRONG:

14 Q. Well, you refer to some of
15 the equipment. Do you recall what
16 issues he raised with respect to some of
17 the equipment?

18 A. No.

19 MR. MOLDOFF: Again,
20 objection to the form.

21 BY MR. ARMSTRONG:

22 Q. Do you recall what issues
23 he raised with respect to the current
24 market?

ESQUIRE DEPOSITION SERVICES

1 A. I presume he felt he was
2 overpaying for the equipment; I don't
3 know.

4 Q. Was he buying the
5 equipment?

6 A. He was talking about buying
7 equipment. I always thought they were
8 going to buy all of it, but the letter
9 speaks for itself.

10 Q. You say "We believe that
11 the active equipment" --

12 A. Where are you now?

13 Q. The next sentence. "We
14 believe that the active equipment
15 population can be reconciled fairly
16 easily, and the attached spreadsheet
17 reflects what we feel is the correct
18 reconciliation."

19 Do you see that?

20 A. Yeah.

21 Q. Did you participate in
22 preparing the spreadsheet that's
23 attached?

24 A. I don't think I did.

ESQUIRE DEPOSITION SERVICES

1 Q. Do you know who prepared
2 it?

3 A. Probably would have been
4 the computer section.

5 Q. And who was in charge of
6 the computer section?

7 A. In those days, it would
8 have been probably Shalom Cohen or John
9 Whitely. You see, as I have been
10 telling you all along, what equipment
11 you got, you got.

12 Q. Well, this spreadsheet
13 specifies "present Emerald equipment
14 fleet 4/12/02. Number of units:
15 12,837."

16 Do you see that?

17 A. Uh-huh, yes.

18 Q. Was that the number of
19 units that you were proposing to
20 transfer to Sea Star?

21 A. This, to me, says that,
22 yes.

23 Q. How did you know that the
24 Emerald equipment fleet as of April 12,

ESQUIRE DEPOSITION SERVICES

1 2002, was 12,837 units?

2 MR. MOLDOFF: If you know.

3 THE WITNESS: It's what the

4 inventory said.

5 BY MR. ARMSTRONG:

6 Q. When you say "inventory,"

7 are you referring to the NPR inventory?

8 A. We have been talking about

9 that inventory now for the last hour or

10 two.

11 Q. And you were proposing to

12 transfer 899 refrigerated containers to

13 Sea Star?

14 A. We were proposing to

15 transfer all that equipment to Sea Star

16 and give them an option to buy it, on

17 the bottom line.

18 Q. Did Sea Star accept that

19 proposal?

20 A. I don't know. Obviously,

21 in their opinion, they did not, because

22 we're here talking to you today.

23 Q. Is it your position that

24 Emerald leased or rented to Sea Star 899

ESQUIRE DEPOSITION SERVICES

99

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1 refrigerated containers as shown on that

2 spreadsheet?

3 A. It is my position they

4 leased whatever they leased and that was

5 determined through a series of paperwork

6 flows coming from Sea Star to us and

7 from other entities.

8 What this document purports

9 to be is to sell them, after one year,

10 899 units.

11 Q. Are those 899 units units

12 that you believe Sea Star leased or

13 rented from Emerald?

14 MR. MOLDOFF: Asked and

15 answered.

16 BY MR. ARMSTRONG:

17 Q. After the closing.

18 MR. MOLDOFF: He just

19 answered the question.

20 THE WITNESS: The documents

21 will speak for themselves.

22 BY MR. ARMSTRONG:

23 Q. What documents, other than

24 the NPR inventory, would show the

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100

Thomas J. Holt, Sr.

1 refrigerated containers that Sea Star
2 leased or rented from Emerald?
3 A. The amount of equipment
4 that you returned to us. The amount of
5 equipment that you told us you had in
6 your inventory. The amount of equipment
7 that you acknowledge you had possession
8 of over a period of some 28, 30 months.
9 We invoiced on your documents.

10 Q. Did that include equipment
11 that Sea Star had possession of and was
12 storing?
13 A. Only if it was in your
14 possession and you kept it in your
15 possession until you returned it to
16 Emerald under the documentation provided
17 for, which would be a TIR.

18 As to your question on
19 these 899 units, this is only a matrix
20 as to what the equipment breakdown was
21 in 12,837 units. It broke it down to
22 refrigerated containers, dry containers,
23 generator sets, chassis.

24 Then it tried to help you

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